

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE PUBLIC UTILITIES COMMISSION

In the Matter of Minnesota Power's Petition to  
Purchase Square Butte Cooperative's  
Transmission Assets and for Restructuring  
Power Purchase Agreements from Milton R.  
Young Unit 2 Generating Station

**FIRST PREHEARING ORDER**

A prehearing conference was held before Bruce H. Johnson, Administrative Law Judge, on July 8, 2009, at the Public Utilities Commission, 350 Metro Square Building, 121 Seventh Place East, St. Paul, Minnesota. The following persons appeared:

David Moeller, Associate General Counsel, Allete, Inc., 30 West Superior Street, Duluth, Minnesota 55802, appeared for and on behalf of Allete, Incorporated, doing business as Minnesota Power (Minnesota Power).

Linda S. Jensen, Assistant Attorney General, 1400 BRM Tower, 445 Minnesota Street, St. Paul, Minnesota 55101, appeared for and on behalf of Minnesota Department of Commerce, Office of Energy Security (OES).

Andrew P. Moratzka, Attorneys at Law, Mackall, Crounse & Moore, 1400 AT&T Tower, 901 Marquette Avenue, Minneapolis, Minnesota 55402, appeared for and on behalf of the Large Power Intervenors (LPI).

Clark Kaml, Rates Analyst, appeared for and on behalf of the Public Utilities Commission staff.

Based upon the record and the discussion among the participants at the prehearing conference, the Administrative Law Judge makes the following:

**ORDER**

**Procedure**

1. The rules of the Office of Administrative Hearings govern the conduct of the hearings in this matter. Parties must notify the Office of Administrative Hearings as soon as possible if or interpreter or an accommodation for a disability is needed to enable participation in any of the hearings.

2. Requests of subpoenas for the attendance of witnesses or the production of documents shall be made to the Administrative Law Judge pursuant to Minn. R. 1400.7000. A copy of the subpoena request shall be served on the other parties. A subpoena request form is available at [www.oah.state.mn.us](http://www.oah.state.mn.us).

### **Parties, Intervention, and Public Participation**

3. The parties to this matter, as named in the Commissioner's Notice and Order for Hearing issued on July 1, 2009, are Minnesota Power and OES. No Petitions to Intervene were filed with the Administrative Law Judge prior to the prehearing conference.

4. Other persons who wish to intervene as parties in this proceeding must file a Petition to Intervene that complies with Minn. R. 1400.6200 with the Administrative Law Judge no later than September 15, 2009. Copies of the Petition must be served upon all existing parties and the Commission. A Notice of Appearance must be filed with the Petition. Objections to such a petition must be filed within seven days of the filing of the petition.

5. Members of the public need not become parties to participate in this matter. If time permits, public participation may also be permitted by the Administrative Law Judge during the evidentiary hearing. Any person who participates in the evidentiary hearing may offer oral or written testimony and exhibits pursuant to Minn. R. 1400.6200, subp. 5, and 1400.7150, subp. 1, and may be questioned by the parties and the ALJ.

### **Schedule**

6. The following schedule is adopted:

<b>Event or Document</b>	<b>Event Date or Due Date</b>
Minnesota Power Files Initial Testimony	August 10, 2009
Deadline for Petitions to Intervene	September 15, 2009
Other Parties' Rebuttal Testimony Due	September 15, 2009
Deadline for Parties' Objections to Petitions to Intervene	September 17, 2009
Evidentiary Hearing in St. Paul	September 17-18, 2009
Minnesota Power's Post-Hearing Brief	September 25, 2009*
Responsive Briefs Due	October 2, 2009*

ALJ Report and Recommendation Due	October 27, 2009*
Exceptions to ALJ Report (20 days after report pursuant to Minn. R. 7929.2700, subp. 1) MP will need variance from MPUC to shorten to ten days	November 6, 2009*
Replies to Exceptions (10 days later pursuant to Minn. R. 7929.2700, subp. 2) MP will need variance from MPUC	Waive
Tentative MPUC Hearing	Tuesday, November 24, 2009

7. Nonpublic versions of prefiled testimony shall be eFiled by the date indicated; paper copies thereof must be received by the ALJ and appropriate parties the following business day.

8. Notice of the public and evidentiary hearings shall be given by Minnesota Power as set forth in the Commission's Notice and Order for Hearing.

### **Settlement**

9. Minn. Stat. § 216B.16, subd. 1(a), requires the Administrative Law Judge to convene a proceeding for the purpose of encouraging settlement of any or all of the issues in this proceeding. The Administrative Law Judge encourages the parties to discuss opportunities for settlement with each other prior to the evidentiary hearing. During the days of the evidentiary hearing, an informal conference will be held to discuss the progress of such discussions.

### **Discovery**

10. A party may serve requests for information on any other party. All requests for information shall be made in writing by e-mail, and the requesting party shall follow the e-mail with a copy of the request sent by regular U.S. mail or other delivery service to all parties. **Information requests shall NOT be eFiled.** To the extent that a request includes material designated as Trade Secret or Nonpublic under the Minnesota Government Data Practices Act, Minn. Stat. ch. 13, an e-mail request is required only between the requesting and responding party. Requests shall be sent to the person(s) designated to receive data requests by the party from whom the information is sought. Any request received by e-mail after 4:30 p.m. on a business day, on a weekend day, or on a Minnesota state holiday is considered received on the next business day.

11. The party responding to the request shall provide the requested information to the requesting party within eight business days of receipt of the information request. If the information cannot be supplied within eight business days, the responding party shall notify the requesting party as soon as reasonably possible in advance of the deadline of the reasons for not being able to supply the information and attempt to work out a schedule of compliance with the requesting party.

12. Responses to information requests shall be submitted by e-mail, and the responding party shall follow the e-mail with a copy of the response sent by regular U.S. mail or other delivery service, unless the receiving party agrees to accept responses by e-mail delivery only. **Information request responses shall NOT be eFiled.** If a response includes material designated as Trade Secret or Nonpublic, an e-mail response is required only between the requesting party and the responding party. Any response received after 4:30 p.m. on a business day is considered to be received the following business day.

13. If the responding party is unable to send the response by e-mail because of the volume or nature of information included in a response, the responding party shall send the response by facsimile, U.S. mail, or delivery so that the requesting party receives the entire response including any material designated as Trade Secret or Nonpublic by the date due. Responding parties may utilize optical data storage (DVDs or CDs) to convey large volumes of data. If the response is sent by facsimile, the responding party shall follow the facsimile with a copy of the response sent by regular U.S. mail or other delivery service. There shall be a continuing obligation to update and supplement information responses with any responsive material that may subsequently be discovered or acquired by the responding party. The responsive information need not be supplied to other parties unless specifically requested by a party.

14. A party that wishes to receive e-mail copies of requests or responses shall notify the requesting or responding party, which shall provide the information in that format. If the request or response contains material designated as Trade Secret or Nonpublic information, the providing party may require that the requesting party comply with the terms of the Protective Order in this matter before providing the information.

15. Minnesota Power will be proposing a Protective Order for these proceedings. Other parties shall have three business days to file any objections to that proposed Protective Order.

16. A common practice in Commission proceedings is for a party to make a blanket information request for copies of all responses to other parties' information requests. Any responding party is allowed to object and decline to provide all or certain Trade Secret or Nonpublic information in responses to any particular party. Any party denied responses in this manner may raise the issue with the ALJ through a motion to compel.

17. The following persons shall be served with an e-mail copy of any information requests or responses addressed to Minnesota Power.

David R. Moeller ([dmoeller@allete.com](mailto:dmoeller@allete.com))

Any necessary paper copies of information requests or responses shall be mailed to:

David R. Moeller Minnesota Power 30 Superior Street Duluth, MN 55802-2093
--

18. All disputes concerning the reasonableness of discovery requests and the timing and sufficiency of responses shall be resolved by the Administrative Law Judge upon motion of a party. Such motions may be brought informally by email. Notice of such motions will be made by email. Informal motions to address discovery requests and responses will usually be heard by telephone conference.

### **Prefiled Testimony**

19. Prefiled testimony and exhibits may be in any reasonable format that is understandable, logically organized, and capable of being cited by page and line number, paragraph number, or similar identifier.

20. A paper copy of prefiled testimony being offered for admission into the record at the hearing shall be provided for use at the hearing. The offering party will identify the document as having been eFiled (with the unique eFile identifying number of the document). The Administrative Law Judge will assign a hearing exhibit number to the document at the time that it is offered for admission at the hearing.

21. Corrections to any prefiled testimony shall be identified and marked on the paper copy of the exhibit. Those changes will be eFiled as soon as practicable after the hearing. A hearing exhibit list will be prepared that identifies each exhibit in the hearing record, with its hearing exhibit number and unique eFile identifying number. The eFiled documents constitute the official record of the proceeding, along with any supplemental record data that cannot be eFiled. Any such supplemental record data will be identified by the ALJ as included in the official record.

22. Prefiled testimony that is not offered into the record or stricken portions of prefiled testimony that is offered, shall be considered withdrawn and no witness shall be cross-examined concerning the withdrawn testimony. Any new affirmative matter that is not offered in reply to another party's direct case will not be allowed in rebuttal testimony and exhibits. Except for good cause shown, all revisions or corrections to any prefiled testimony shall be in writing and served upon the Administrative Law Judge and the parties no later than three days prior to the commencement of the evidentiary hearing.

## **Witnesses**

23. Subject to change by agreement of the parties or further order of the Administrative Law Judge, the order of testimony shall be: Minnesota Power, any Intervenor in the order their petitions are filed, and OES. Questioning of the witnesses shall proceed in the same order, followed by Commission staff and the Administrative Law Judge.

24. In the event that a witness must be scheduled for a day certain to offer testimony, the sponsoring party should attempt to reach agreement with the other parties and then submit a request to the Administrative Law Judge.

25. Witnesses will be allowed ten minutes in which to summarize their prefiled testimony. In order for a witness to include new information in his or her summary, the party offering that witness' testimony must obtain the prior approval of the Administrative Law Judge upon a motion with a showing of good cause for not having addressed that information in prefiled testimony. Similarly, a witness will be permitted to respond to new matter raised by another party that was not previously addressed in prefiled testimony upon direct examination and with the prior approval of the Administrative Law Judge.

26. Parties shall examine and cross-examine witnesses through their attorneys if they are represented by counsel. Any party not represented by counsel may examine and cross-examine each witness through any one representative chosen by the party.

27. Except for good cause shown, objections by any party relative to the qualifications of a witness or the admissibility of any portion of a witness' prefiled testimony shall be considered waived unless the objecting party states its objection by motion made to the Administrative Law Judge, prior to commencement of the evidentiary hearing.

## **Filing of Documents (Excluding Information Requests and Responses)**

28. Original documents shall be filed using the Commission's eFiling system where feasible, in accordance with Minn. Stat. § 216.17, subd. 3, and the Commission's standards. In any instance where the eFiling system cannot be used, the original document shall be filed by delivery or mail with the Administrative Law Judge.

29. The effective date of filing shall be the date the document is eFiled, mailed by U.S. Mail, or delivered to the Administrative Law Judge. Parties using the eFiling system should retain the unique document identifier as proof of filing through that system. Proof of service to the service list in this proceeding shall be filed with each document or within three business days thereafter.

30. With the exception of Trade Secret and other Nonpublic Data, copies of all documents that are filed shall be served by e-mail according to the attached official

service list by 4:00 p.m., and a hard copy shall also be mailed or delivered that day to the persons so indicated on the official service list. The list will be revised as necessary by the Office of Administrative Hearings.

31. Hard copies of trade secret and other nonpublic data shall be transmitted by U.S. Mail or delivery to the parties who have signed Exhibit A to the Protective Order. Such documents may be served on the next business day following the filing of the public version.

32. After the Administrative Law Judge's Report is issued, the parties shall file the original of all documents with the Executive Secretary of the Commission in accordance with the Commission's standards.

33. Where Trade Secret or Nonpublic Data is filed with the Administrative Law Judge, that filing shall be prepared and marked in accordance with the Public Utilities Commission's September 1, 1999, Revised Procedures for Handling Trade Secret and Privileged Data. The procedures are available from the Commission website and may be viewed at:

[http://www.puc.state.mn.us/portal/groups/public/documents/pdf\\_files/000671.pdf](http://www.puc.state.mn.us/portal/groups/public/documents/pdf_files/000671.pdf) .

Access to nonpublic data shall be governed by the Protective Order to be issued in this proceeding.

Dated: July 17, 2009

s/Bruce H. Johnson  
\_\_\_\_\_  
BRUCE H. JOHNSON  
Assistant Chief Administrative Law Judge